BEFORE

THE PUBLIC SERVICE COMMISSION

OF SOUTH CAROLINA

DOCKET NO. 2018-401-E

IN RE: Request of Beulah Solar, LLC for Modification of Interconnection Agreement with South Carolina Electric & Gas Company	))))))	**BEULAH SOLAR, LLC'S RESPONSE IN OPPOSITION TO THE COMPANY'S MOTION TO COMPEL**

INTRODUCTION

Beulah Solar, LLC ("Beulah Solar") filed its Motion to Hold this Docket in Abeyance on **February 21, 2019**. Beulah Solar also filed its Motion for Protective Order on **February 22, 2019**. Both Beulah Solar's Motion to Hold Docket in Abeyance and Motion for Protective Order are incorporated herein by reference, as if set forth herein verbatim. Procedurally, both of Beulah Solar's Motions predated the Company's Motion, and either one will be dispositive and must be addressed prior to the Company's Motion to Compel. The Company's Motion, while acknowledging the existence of both of Beulah Solar's Motions, attempts to ignore the legal effect of Beulah Solar's two pending Motions by the Company's filing of an inappropriate Motion. The Company's Motion also ignores the existence of a stakeholder process, in which the Company is participating, and which stakeholder process is now underway. It is likely that the conclusion of the stakeholder process will render the Company's Motion moot and allow this Docket to be closed administratively. To the extent this Commission addresses the Company's Motion to Compel, it should deny that Motion. Beulah Solar's Response in Opposition to the Company's Motion follows.

RESPONSE TO MOTION

Beulah Solar Fulfilled its Obligations Under the Discovery Rules.

The Company asserts that Beulah Solar did not fulfill its "obligations to meaningfully participate in discovery", because Beulah Solar did not provide Responses completely satisfactory to the Company, in response to the Company's burdensome and harassing Discovery Requests. To the contrary, Beulah Solar has proceeded in an entirely appropriate fashion. Specifically, Beulah Solar (**i**) filed a Motion for Protective Order, which is currently pending before this Commission (**ii**) filed a Motion to hold this Docket in abeyance, which is currently

pending before this Commission (**iii**) provided complete Objections/Responses to the Company's Requests for Admission[1] (**iv**) indicated its Objections to the Company's Interrogatories and Requests for Production and (**v**) provided Responses to certain of the Company's less-objectionable Interrogatories.

The Company's *Ultra Vires* Acts are the Basis for this Docket.

The Company's filing of a Motion and other related filings, ignore the uncontroverted fact that this Docket is open as a result of *ultra vires* acts of the Company. Specifically, the Company, acting without permission from this Commission, has included unapproved "curtailment language" in the Company's IAs, etc. Instead of justifying why the Company has included unapproved "curtailment language" in its documents, the Company propounds unnecessary and expensive Discovery Requests to Beulah Solar, all the while ignoring the fact that Beulah Solar has done nothing wrong, while the Company has included the above-described unapproved "curtailment language" in its documents. Discovery Requests to Beulah Solar are not appropriate and the focus of this Docket should simply be on the Company's use of unapproved "curtailment language" in the Company's documents.

Discovery is Inappropriate Given the Current Posture.

There are three reasons that discovery is inappropriate in this Docket: (**i**) Beulah Solar's Motion to Hold Docket in Abeyance described hereinbelow, which if granted, will moot the need for discovery in this Docket (**ii**) Beulah Solar's Motion for Protective Order described hereinbelow, which if granted, will moot the need for discovery in this Docket and (**iii**) the stakeholder process, in which the Company is participating and which is **now underway**, will likely lead to changes in the Company's unapproved "curtailment language", which will moot the need for discovery in this Docket and allow this Docket to be closed administratively.

[1] The Company devotes considerable energy to characterizing Beulah Solar's Responses to the Company's Requests for Admissions, as deficient. But the only argument the Company can muster, is that Beulah Solar, when it objected to the Company's use of the undefined term "upstream owner" in the Company's Requests for Admissions, [Beulah Solar] *should have known* that the Company was using the term as it is used on FERC Form 556 (where "upstream owner" is also not defined).

Beulah's Motion to Hold Docket in Abeyance.

Beulah Solar's pending Motion to Hold Docket in Abeyance precedes the Company's filing of its Motion in time, in that the Company's Motion was filed 12 calendar days after Beulah Solar's Motion to Hold Docket in Abeyance. Beulah Solar's Motion to Hold Docket in Abeyance if granted, renders the Company's Motion hereinabove, moot, making the Company's attempt to have its Motion heard prior to Beulah Solar's Motions inappropriate.

Beulah's Motion for Protective Order.

Beulah Solar's pending Motion for Protective Order also predates the Company's Motion hereinabove, by 11 calendar days. Beulah Solar's Motion for Protective Order if granted, renders the Company's Motion hereinabove, moot, making the Company's attempt to have its Motion heard prior to Beulah Solar's Motions inappropriate.

The Company's Motion is Procedurally Improper.

The Company's filing of this Motion is procedurally incorrect. South Carolina case law is clear that a Motion to Compel is not the proper response to a Motion for Protective Order. Further, the Motion to Compel is unnecessary in that, if the Motion for Protective Order were to be denied in full or in part, Beulah Solar would be providing additional responses anyway to the extent ordered by the Commission.

To the Extent the Commission Reaches the Issue, the Company's Motion is Unmeritorious.

As Beulah Solar's Motion for Protective Order explains, this case arises from the Company's adoption of "curtailment language" that this Commission never approved. Beulah Solar maintains that the curtailment provisions of its IA with the Company creates uncertainty about future project revenues, given the current uncertainty about how the Company will implement those provisions. This uncertainty compromises Beulah Solar's ability to obtain financing for Milestone #1 payments, making it appropriate for this Commission to allow those payments to be deferred, until the conclusion of the stakeholder process, or for the Commission to modify the Company's IA, pursuant to Section 12.12 of the Company's IA and S.C. Code Ann. § 58-27-980, (1976, as amended).

The Company provides no colorable argument justifying the volume and timing of its Discovery Requests. Yet it is undisputed that: (**i**) right out of the gate, the Company served 13 Requests for Admissions, 25 Interrogatories, and 20 Requests for Production on Beulah Solar; and (**ii**) only 13 days later and prior to the response deadline for those initial requests, the Company then served 2 additional Requests for Admissions, 3 additional Interrogatories, and 4 additional Requests for Production. Distilled to its essence, the Company's argument on this issue is that it could do anything it wanted to do. That is incorrect. Rule 26 of the South Carolina Rules of Civil Procedure, ("SCRCP"), requires the parties and the adjudicating tribunal to tailor discovery to the needs of a particular case. *See* Rule 26(a), SCRCP ("The frequency or intent of use of discovery methods . . . shall be limited by the court if it determines that . . . the discovery is unreasonably burdensome or expensive taking into account the needs of the case, the amount in controversy, limitations on the parties' resources, and the importance of the issues at stake in the litigation."). It is noteworthy that the Company provides no legitimate justification for why so much – and so much extraneous— information is needed to prepare any particular defenses or to respond to Beulah Solar's original filing. Rather, the Company insists, inconsistent with the discovery Rules, that the Company must be permitted to engage in an unwarranted fishing expedition to determine whether the Company has defenses. The lack of specificity in this regard speaks volumes.

The Company similarly provides no legitimate justification for the unwarranted scope of its Discovery Requests. In Beulah Solar's Motion for Protective Order, Beulah Solar provided the following examples of improper requests:

- "Describe in detail and with specificity each and every curtailment protocol You expect to be adopted and how each will impact the curtailment scenarios contained in the IA[,]"
- "Produce all documents and communications relating to a potential sale or ownership transfer of Beulah[,]"
- "Set forth an itemized statement of any and all damages You allege You sustained as a result of any act or omission of SCE&G" (Beulah is not asserting claims for damages)[,]"

- Predict when the stakeholder process (which the Company *is a party to*) will be completed, as well as the date on which the IA amendment requested by Movants will occur;
- Identify how *other* solar developers will be impacted by the stakeholder process, and provide detailed information about the ownership and operation of Cypress Creek Renewables' other projects in South Carolina;
- Provide Movants' recent tax returns; and
- "Produce all financial statements for Beulah from January 1, 2018, to present including, but not limited to, ledgers, profit and loss statements, balance sheets, cash flow statements, and bank statements."

The Company makes no effort to explain the sweeping nature of these requests. If the Docket is not placed in abeyance and if the Company wishes to propound different requests within the scope of the Rules, then Beulah Solar can respond to them, if appropriate. But the Company is not entitled to relief on its current Discovery Requests, which are not relevant to the Company's unapproved "curtailment language", or to any identified claim or defense in this Docket. *See* Rule 26(b), SCRCP (limiting discovery to relevant information about claims and defenses).

Finally, the fact that the Company works so hard in its argument to avoid addressing the actual volume, substance, timing, and scope of the Company's Discovery Requests, proves what is plain on the face of those requests: They are harassing and unduly burdensome. Though the Discovery Requests themselves reveal that they are boilerplate and "cookie-cutter," the Company summarily responds that they are not. The Company simply dodges the questions of why the Company propounded two sets of Discovery Requests in rapid succession, why the Company asked about relief not sought by Beulah Solar, and why the Company asks Beulah Solar to predict the future. This evasion provides no excuse for the Company subjecting Beulah Solar to annoyance, embarrassment, oppression, and undue burden and expense in violation of Rule 26(c), SCRCP. See, Rule 26(c), SCRCP (authorizing protective orders to prevent such tactics).

For the reasons stated herein, the Company's Motion to Compel should be denied.

CONCLUSION

Based on the foregoing, and in light of (**i**) Beulah Solar's pending Motion to Hold Docket in Abeyance (**ii**) Beulah Solar's pending Motion for Protective Order and (**iii**) the stakeholder process on the unapproved "curtailment language", now underway, this Commission should find that the Company's Motion is untimely and without merit. The Company's filing of this Motion appears to be an attempt to divert this Commission's attention from Beulah Solar's two pending Motions and the stakeholder process on the unapproved "curtailment language", now underway. This Commission should further find that Beulah Solar's two pending Motions, which predate the Company's Motion must be heard and decided, prior to the Company's Motion, in that this Commission's granting the relief sought in either Motion and the stakeholder process, which the Company is participating in, and which is now underway, on the Company's unapproved "curtailment language", will render the Company's Motion moot and a nullity. To the extent this Commission takes up the Company's improper Motion to Compel, it should deny the same, consistent with the Rules governing discovery.

This Commission should grant the relief sought in Beulah Solar's Motion to Hold Docket in Abeyance and Motion for Protective Order, both pending before this Commission, as that will render the Company's Motion described hereinabove, moot. Hearing the Motions described hereinabove, in any other order, would cause Beulah Solar to incur inappropriate cost and expense and would be a waste of judicial economy of this Commission.

Respectfully Submitted,

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